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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

72-966

CONFEDERATION LIFE INSURANCE COMPANY,
Petitioner,

v.

REYES ARIDA CONTE, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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January 1973

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No.

CONFEDERATION LIFE INSURANCE COMPANY,
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v.

REYES ARIDA CONTE, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner, Confederation Life Insurance Company,[1] prays that a writ of certiorari be issued to review the decision of the Supreme Court of Florida entered in this case.

OPINIONS BELOW

The opinion of the District Court of Appeal of Florida for the Third District, which is reported at 254 So. 2d 45, appears at p. 1a, *infra*. The opinion of the Supreme Court of Florida is not yet reported; it appears at p. 5a, *infra*.

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[1] Petitioner, styled Confederation Life Association in the courts below, has undergone a change of name and the caption of this petition reflects that change. Petitioner continues to be a mutual insurance company.

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JURISDICTION

The opinion of the Supreme Court of Florida was entered on July 19, 1972, and constitutes the judgment of that court. A timely petition for rehearing was denied by that court on October 10, 1972, by an order which appears at p. 7a, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether Florida has violated the Due Process Clause of the Fourteenth Amendment by applying its own local law to enlarge contractual obligations of a foreign company under an insurance contract made in Cuba, payable in Cuban legal tender, covered by reserves located in Cuba, performable by its express terms in Cuba, and insuring the life of one who when the contract was made was a domiciliary of Cuba.

2. Whether Florida has transgressed international law and thus infringed the authority of the Federal Government over foreign affairs by applying local law to a wholly foreign transaction with which Florida has no connection.

3. Whether by disregarding the effect of Cuban currency legislation governing a Cuban contract Florida has acted inconsistently with the act of state doctrine, which this Court has held to be binding in both state and federal judicial proceedings.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the provision of the Fourteenth Amendment of the United States Constitution providing that no state shall "deprive any person of . . . prop-

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erty, without due process of law" and the constitutional authority of the Federal Government over foreign affairs.

STATEMENT

For many years prior to 1951, Cuba maintained a highly unusual "dual currency" regime. (Tr. 72-74.)[2] Under Cuban law during this period, the United States dollar constituted legal tender in Cuba alongside the Cuban peso. Consequently, contracts written in Cuba at this time often specified dollars as the domestic Cuban currency of payment. (Tr. 132.)

Petitioner, Confederation Life Insurance Company ("Confederation"), is a Canadian mutual insurance company which for many years has provided life insurance in countries throughout the world including Cuba and the United States. In 1944, Confederation, through its Havana office, issued a 20-year endowment insurance policy to the respondent, a Cuban citizen who then resided in Cuba. (Tr. 19.)

Both respondent's application and the contract itself were written in Spanish. (Tr. 8-18.) The contract was made in Cuba. The application was executed in Cuba. (Tr. 35-38, 131.) The policy was not valid until notarized in Cuba, and notarization took place there. (Tr. 34.) Moreover, by the express terms of the application the policy became effective only on its delivery and on payment of the first premium (Tr. 38, 131), and both of these events occurred in Cuba through Confederation's Havana office (Tr. 131). The insurance contract was not only made in Cuba but it expressly

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[2] References designated "Tr. —" are to the partial transcript of record filed in the Supreme Court of Florida containing pertinent extracts from the record.

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provided that Cuba was the place of performance of Confederation's obligations:

> "PLACE OF PAYMENT.—All sums payable or exigible [demandable] under this policy shall be paid at the principal office of the Association in the city of Havana, Republic of Cuba." (Tr. 23.)

As was true of many of Confederation's policies under Cuba's pre-1951 dual currency regime, the policy provided that payments under it should be made "in lawful currency of the United States of America" (Tr. 23), which was then one of Cuba's two domestic currencies of legal tender status. The amount of the policy was $4,000. On June 30, 1951, however, Cuba withdrew the legal tender status of the dollar and provided that all previously contracted dollar obligations payable in Cuba would be payable at the rate of one peso per dollar. (Tr. 74.) This legislation converted the policy from one payable in dollars to one payable in an equivalent number of pesos. (Tr. 133.)

In the next premium notice after June 30, 1951, Confederation notified its policyholders that, in accordance with the legislation, all premiums and all company obligations stated in dollars "will from now on be payable in Cuban national currency at par . . . ." (Tr. 134.) The respondent did not terminate his policy but continued to pay premiums on it. His premiums were thereafter paid in pesos or by dividends and automatic premium loans. (Tr. 135-36.) His policy continued to constitute a part of Confederation's Cuban business, which was subject to Cuban governmental supervision and on which taxes were paid to the Cuban Government.

The Government of Cuba was overthrown in January 1959 and a new Cuban Government under Fidel Castro was installed. Shortly thereafter, the United States

recognized the Castro regime as the legitimate government of Cuba, and that recognition continues in effect today. By legislation in September 1959 and February 1961, the new Cuban Government reconfirmed and reinforced the 1951 legislation.[3] Based on the uncontroverted sworn statement of the expert witness on Cuban law, a former Justice of the Supreme Court of Cuba, the Cuban legislation prohibits payment of the respondent's policy by Confederation in any currency other than pesos and in any place other than Cuba, and it provides for severe criminal sanctions in the event of violations. (Tr. 75.)

Since 1951 Confederation has maintained in Cuba peso reserves sufficient to cover its obligations under Cuban policies. (Tr. 136.) Those reserves cannot under Cuban law be transferred to the United States, nor does the company maintain dollar reserves against Cuban policies. (Tr. 136-37.) Although it no longer writes insurance policies in Cuba, Confederation has maintained its Havana office to service policies previously written in that country by making payments in pesos there pursuant to Cuban law. Where the insured or beneficiary so desires, Confederation is willing and able to hold benefits now payable until requested to pay them to claimants.

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[3] The September 1959 law (Tr. 75, 107-11) made any unauthorized transfer of funds abroad by any means "a felony of currency contraband" rendering guilty individuals liable to severe imprisonment and fines; companies found to violate the law were made subject to "intervention" which amounts to government seizure of the company. The law passed in February 1961 reconfirmed that pesos alone were legal tender in Cuba and said all obligations payable in Cuba, whether or not agreed upon in another currency, "shall be settled and paid necessarily" in Cuban currency. (Tr. 75, 112-25.)

The respondent left Cuba at a date not disclosed by the record. After the endowment feature of his policy matured in 1964 he asked Confederation to pay him $4,000 in Florida. Confederation stated its willingness to pay in accordance with its contract, in Cuba in pesos. (Tr. 137.) Respondent brought suit. On cross-motions for summary judgment, judgment was given for him by the trial court for $4,000.

The District Court of Appeal for the Third District reversed in part, holding that judgment should be for the dollar equivalent of 4,000 pesos. Both parties petitioned the Florida Supreme Court for certiorari. Confederation's petition was denied. Respondent's petition was granted, and the Florida Supreme Court reversed the District Court of Appeals. In reliance upon its decision in *Lara* v. *Confederation Life Ass'n*, 257 So. 2d 42 (Fla. 1971), which was brought here on petition for a writ of certiorari as No. 71-1487, certiorari denied, October 23, 1972, the court ordered reinstatement of the trial court's judgment for the dollar amount of the policy, *i.e.*, $4,000.

The decision made clear that *Confederation Life Ass'n* v. *Ugalde*, 164 So. 2d 1 (Fla.), *cert. denied*, 379 U.S. 915 (1964), no longer stated the law of Florida. In that case the court had held, in accordance with traditional Florida choice-of-law rules, that a Confederation policy similar to the one involved here "was a Cuban policy covered by Cuban law," which according to the governing law had become a peso policy and which had not been breached since Confederation was prepared to perform by paying pesos in Havana. 164 So. 2d at 2. *Ugalde* was explained in the opinion below as resting upon the International Monetary Fund agreement, to which Cuba was a party at the time of decision but from which it later withdrew.

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(The explanation is wholly unpersuasive because, as the petition for certiorari and other papers filed with this Court at the time disclose, No. 452, October Term 1964, Cuba withdrew from the IMF shortly after the *Ugalde* decision; the withdrawal was invited to the Florida court's attention by a motion for remand, and the court was not moved to alter its decision, which was based independently on the Florida choice-of-law doctrine indicated above.)[4]

Throughout the proceeding below, Confederation asserted that for a Florida court to enlarge its obligations as defined by Cuban law would represent an application of local law to an entirely foreign transaction in violation of the Due Process Clause of the Fourteenth Amendment; and, by this action and by disregarding the operation of a Cuban currency law on a Cuban contract, Florida would involve the United States in a violation of international law and contravene the act of state doctrine enunciated by this Court.[5]

REASONS FOR GRANTING THE WRIT

The issues presented in this case are the same as those in *Confederation Life Ins. Co.* v. *Lara,* No. 71-1487, in which the Court, over the dissent of Mr. Justice Brennan, joined by Mr. Justice Douglas, denied certiorari on October 23, 1972. There are substantial allegations that by the application of Florida law to a contract with which Florida has no contact and that is clearly governed by Cuban law the Florida Supreme

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[4] See, particularly, Brief for Respondents in Opposition, *Ugalde* v. *Confederation Life Ass'n*, No. 452, O.T. 1964, pp. 6-7.

[5] Confederation raised the federal questions in the Florida courts in its answer to the complaint and a motion addressed thereto (Tr. 39-40, 44, 55, 59, 62-63) and in its brief in the District Court of Appeal (pp. 38-42) and its brief on the merits in the Florida Supreme Court (pp. 34-38).

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Court has deprived Confederation of property without due process of law in violation of the Fourteenth Amendment, has placed the United States in violation of international law and has ignored the act of state doctrine. The questions are important from the standpoint of United States relationships with Canada, which formally expressed its concern in the *Lara* case, and from the standpoint of Confederation's potential liability on Cuban policies. The potential liability runs into many millions of dollars. Because Confederation is a mutual insurance company that cannot bring its reserves held against those policies out of Cuba, the liability could only be satisfied at the expense of its other policyholders.

Unlike the *Lara* case, the present case comes here unencumbered by references in the opinions below to the Canadian decision, *Imperial Life Assurance Co.* v. *Colmenares*, [1967] Can. L. Rep. 443 (Sup. Ct.). The Canadian Supreme Court there had before it an insurance contract written through a Canadian insurance company's Havana office that the court found to have been made in Canada and under which premiums and benefits were expressed to be payable in bank drafts drawn on New York. The court on this basis applied Canadian law to determine obligations under the contract. Confederation's policies are quite different from the policy considered in the *Colmenares* case, and the Confederation policy at issue here could not be found to be a Canadian contract.

It was urged in *Lara* that, because the trial court had referred to the *Colmenares* decision and said that Canadian law governed the contract, this was the Florida Supreme Court's ground of decision. Although the Justices who dissented from the denial of certiorari thoroughly refuted this view, it may have been thought

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to complicate matters so as to make the *Lara* case an inappropriate vehicle for the consideration of the questions presented both in that case and here. There is no such complication in this case. It is perfectly clear now that the Florida courts have applied and in all events will apply their own law so as to render Confederation liable in dollars on all of its Cuban insurance contracts that were originally expressed in dollars.

We summarize below the considerations that call for granting the writ that were stated in the petition in *Lara*. Copies of the *Lara* petition and reply brief are being served upon respondent along with this petition.

1. The Due Process Clause of the Fourteenth Amendment forbids any state to apply its local law to alter substantive obligations arising out of a foreign transaction having no significant relation to the state. As Mr. Justice Brennan said in his dissent in the *Lara* case, after quoting from the foregoing statement as it was made in the *Lara* petition:

> "The general validity of that proposition is clearly established by *Home Insurance Co.* v. *Dick*, 281 U.S. 397 (1930), where we held that the State of Texas was without power to affect the terms of the contracts since all acts relating to the making of the policy were done in Mexico. In an opinion by Mr. Justice Brandeis, the Court held that the attempt by the Texas courts 'to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law.' 281 U.S., at 408."

Mr. Justice Brennan went on to point out that in *Clay* v. *Sun Ins. Office, Ltd.*, 377 U.S. 179 (1964), the Court had "reaffirmed by implication" the validity of *Dick* while concluding that on the facts of *Clay* it was

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reasonable for the state to apply its own law. *Dick* was described as a case in which the forum state's relationship to the transaction was "wholly lacking," and *Hartford Accident & Indem. Co.* v. *Delta & Pine Land Co.*, 292 U.S. 143 (1934), as a case in which the relationship was "too slight and too casual" to permit application of the forum state's law. 377 U.S. at 182. Mr. Justice Brennan urged plenary review to determine whether the *Lara* case was controlled by *Dick* and *Delta Pine & Land Co.* or was within the permissible range of forum state action established in *Clay*.

The same question is posed again here just as clearly. It is true that in *Lara* the insured had lived in Cuba until his death, but two of the six beneficiaries who sued on the contract had become residents of Florida, just like the respondent policyholder here. Residence in Florida is immaterial. In *Dick* the insured's permanent residence was in Texas, and the Court considered this fact "without significance" since the critical contractual events all occurred in Mexico. 281 U.S. at 408.

Just as we urged in *Lara*, there are circumstances here that give particular point to Confederation's appeal to the idea of fairness that underlies the Due Process Clause. The decision of the court below is an illogical and unexplained departure from the traditional conflicts rules that the Florida courts have applied in the past and have continued to apply contemporaneously with this case in disputes not involving Cuban insurance contracts. See, *e.g.*, *State-Wide Ins. Co.* v. *Flaks*, 233 So.2d 400, 402 (Fla. Dist. Ct. App.), *cert. dismissed*, 238 So.2d 427 (Fla. 1970). The Florida Supreme Court, moreover, has never even commented on the substantial federal questions presented to it.

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Inevitably the suspicion arises that a foreign corporation is not receiving the even-handed justice that it has the right to expect in American courts.

Further, the present controversy is arising repeatedly in the American courts so that resolution by this Court will be of great precedential importance. Confederation estimates that under the decision below and other Florida decisions its liabilities to Cubans under Cuban policies approximate $15 million, and a far larger amount may ultimately be at stake; the Cubans who have immigrated to this country, now estimated to number approximately 400,000, necessarily include a very large number of insureds and beneficiaries. Suits involving Cuban insurance policy claims against Confederation alone, quite apart from suits involving other insurers, have already been litigated in state and federal courts and many more are virtually inevitable.[6]

Finally, there is the ever-present threat that the Cuban Government will act against Confederation if it is compelled to discharge Cuban obligations, payable in pesos in Cuba, through the payment of dollar judgments in the United States. Confederation has been responsibly advised by an expert in Cuban law that Cuba prohibits dollar payments of the Cuban obligations here involved (Tr. 75), and the company has both assets and employees in Cuba that are subject to the severe sanctions applicable under Cuban law for acts

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[6] Every court apart from the Florida state courts which has considered a comparable claim against Confederation on one of its Cuban policies has held that Cuban law applies to determine the company's obligations. *E.g.*, Johansen v. Confederation Life Ass'n, 312 F. Supp. 1056 (S.D. N.Y. 1970), *aff'd*, 447 F.2d 175 (2d Cir. 1971); Ramil v. Confederation Life Ass'n, Equity No. 88020, Mass. Superior Court, Dec. 22, 1971.

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that government construes as violating its currency restrictions (Tr. 136).

2. The improper application of Florida law in the present case not only violated the Fourteenth Amendment but involved the United States in a breach of international law. International law is violated when courts prejudicially alter the rights and obligations of a foreign national arising out of a transaction having little or no substantial contact with the forum state. See *Restatement (Second), Foreign Relations Law of the United States* § 19 & comment d (1965). The principle that foreign contract rights cannot be abrogated by local courts has been asserted by the United States Government in espousing a claim on behalf of American citizens. *The Alsop Claim* (*United States* v. *Chile*), 5 Am. J. Int'l L. 1079 (1911).[7] Here the rights of a Canadian national under Cuban law have been abrogated by the Florida courts.

By injuring a foreign national through a violation of international law, "the court commits an international delict and subjects the State to diplomatic representations or the possible award of damages or other reparation by an international tribunal." Stevenson, *The Relationship of Private International Law to Public International Law*, 52 Colum. L. Rev. 561, 574 (1952) (footnote omitted); 5 Hackworth, *Digest of International Law* § 522 (1943); Briggs, *The Law of Nations* 677-80 (1952).

It is no defense to claims against the United States that the injury was done by a state rather than a fed-

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[7] See U.S. Dep't of State, *The Alsop Claim—The Case of the United States* 198-220 (GPO 1910). The claim failed in that instance on several grounds, but the tribunal did not question the principle asserted by the United States. See 5 Am. J. Int'l L. at 1097.

eral court since under international law the conduct of a political sub-unit in causing injury to an alien is "attributable" to the national government. *Restatement (Second), Foreign Relations Law of the United States* § 170 (1965); 5 Hackworth, *Digest of International Law* § 527 (1943). Indeed, it is the responsibility of the United States for Florida's action under international law, and the adverse consequences of that action upon the conduct of foreign affairs by the United States, that make that action a matter of direct federal concern and accordingly render it subject to overriding federal law. *Zschernig* v. *Miller,* 389 U.S. 429 (1968); *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398 (1964).

When the courts in this country improperly extend local law to regulate foreign transactions, they establish a precedent no less applicable to Americans in foreign courts. As this Court said in *Lauritzen* v. *Larsen,* 345 U.S. 571, 582 (1953):

> "[I]n dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."

3. The decision of the Florida Supreme Court conflicts with the act of state doctrine recently reaffirmed by this Court in *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398 (1964), and even more recently in *First Nat'l City Bank* v. *Banco Nacional de Cuba,* 406 U.S. 759 (1972). Under that doctrine an American court may not in the course of deciding a controversy re-ex-

amine, nullify or disregard an act of state of a recognized foreign government so far as that act has determined rights or obligations which are subject to its jurisdiction. This Court has said that under the governing principle "when it is made to appear that a foreign government has acted in a given way on the subject-matter of the litigation, the details of such action or the merit of the result cannot be questioned but must be accepted by our courts as a rule for their decision." *Banco Nacional de Cuba* v. *Sabbatino, supra* at 418, quoting *Ricaud* v. *American Metal Co.,* 246 U.S. 304, 309 (1918).

In this instance, the legislation of the Cuban Government, depriving the dollar of legal tender status in Cuba and converting dollar obligations payable in Cuba into peso obligations, was certainly an act of state of the most traditional kind. In a mirror image of the Cuban legislation, Congress provided in the Foraker Act § 11, 31 Stat. 77, 80 (1900), for the substitution of United States dollars for Puerto Rican pesos after that province was ceded to the United States, and existing peso obligations in Puerto Rico were thereby converted into dollar obligations at the ratio provided in the statute. This Court approved the Foraker Act's application to a pre-existing contract in *Serralles' Succession* v. *Esbri,* 200 U.S. 103 (1906), and that case is only one of a number of decisions throughout the years confirming that this and comparable currency legislation are conventional exercises of national legislative authority.[8]

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[8] Guaranty Trust Co. v. Henwood, 307 U.S. 247, 258-59 (1939); Norman v. Baltimore & O. R.R., 294 U.S. 240, 307-08 (1935); Legal Tender Cases, 79 U.S. (12 Wall.) 457, 548-49 (1870). As the Court said in the *Legal Tender Cases:* "Every contract for the payment of money, simply, is necessarily subject to the constitu-

The Cuban legislation in this case operated upon contractual obligations arising under Cuban law, performable in Cuba and relating to insurance upon the life of a Cuban national. The act of state doctrine is no less applicable because the legislation of the Cuban Government was directed to contractual interests arising under local law rather than to tangible personal property located within the territory.[9]

A situation analogous to the present case would exist if an insurance company issued to an American citizen in this country a policy providing for payment in gold in the United States, and the federal government thereafter passed legislation converting such contracts into dollar contracts and rendering payment in gold unlawful. Compare *Norman* v. *Baltimore & O. R.R.*, note 8 *supra*. If the insured thereafter brought suit in England against the company, demanding payment in gold in England, it is apparent that an English court could not consistently with the act of state doctrine disregard the American legislation and require the insurer to make payment in gold.[10]

In such a situation the United States would have a legitimate interest in the English court's respect for the legislation. Similarly, the insurance company,

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tional power of the government over the currency . . . and the obligation of the parties is, therefore, assumed with reference to that power." 79 U.S. (12 Wall.) at 549.

[9] The act of state doctrine is fully applicable to acts of state which affect intangible commercial rights, *e.g.*, American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909) (unfair competition), and rights having no relation to property at all, *e.g.*, Underhill v. Hernandez, 168 U.S. 250 (1897) (false imprisonment).

[10] As this Court noted in the *Sabbatino* case, 376 U.S. at 421-22 n. 21, the English courts do follow the act of state doctrine.

having contracted in the United States with an American citizen, would reasonably expect to perform its obligations in accordance with American law. The action of the Florida courts sought to be reviewed here ignores precisely equivalent interests and violates the act of state doctrine, which is designed to protect them. If the United States is not prepared to ensure that those interests are protected when foreign companies and foreign governments are involved, there will be no basis for it to complain when foreign courts disregard its acts of state to the detriment of comparable American interests.

CONCLUSION

For the reasons stated above, the writ of certiorari should be granted.

Respectfully submitted,

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January 1973

APPENDIX

APPENDIX

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1971

Case No. 71-24

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation,
Appellant,

vs.

REYES ARIDA CONTE, *Appellee.*

Opinion filed October 26, 1971.

An Appeal from the Circuit Court for Dade County, John J. Kehoe, Judge.

* * *

Before SWANN, C.J., and CHARLES CARROLL and BARKDULL, JJ.

PER CURIAM.

Confederation Life Association, a Canadian corporation, appeals from a summary final judgment for plaintiff, Reyes Arida Conte.

Conte sued the Association and alleged it issued to him in Havana, Cuba, a 20 year endowment policy in the sum of $4,000.00; that he made the yearly payments for twenty years to the association; that he was now a resident of Miami, Dade County, Florida; that he demanded payment of $4,000.00 (the matured value of the policy) but the defendant refused and still refuses to pay except in Cuban pesos in Havana, Cuba. He alleged that because a communist revolutionary government seized power in Cuba in 1959 and because plaintiff was classified as an enemy of the state by that government, by reason of his democratic ideals, the plaintiff was forced to flee Cuba; that plaintiff

could not return to Cuba because of fear for his life or imprisonment as an enemy of the state; that any sum payable to him in Cuba would be immediately confiscated by the Cuban government and it would be a futile act to attempt to accept payment in Cuba; that plaintiff had no adequate remedy at law and, therefore, prayed that the court of equity order defendant to pay him the sum of $4,000.00 U. S. dollars, together with attorneys' fees, in the United States, pursuant to the subject insurance policy in order to prevent the defendant from being unjustly enriched.

The motion of the Association to dismiss the complaint for failure to state a cause of action was denied. In its answer the defendant admitted the policy was issued to plaintiff in Havana, Cuba but generally denied the rest of the allegations in the complaint and set forth various affirmative defenses. Plaintiff filed a motion for final summary judgment, together with a supporting affidavit. Defendant filed opposing affidavits, showing certain facts in support of its answer and certain of its affirmative defenses.

The trial court heard argument on the motion for final summary judgment and entered a summary final judgment for plaintiff and against the defendant, in the amount of $4,000.00 U. S. dollars, together with court costs. The court reserved jurisdiction for the purpose of awarding attorneys' fees to counsel for the plaintiff. The defendant's motion for rehearing and modification of final summary judgment was denied. The defendant filed its notice of appeal and the cause is now before us.

Our examination shows this insurance policy was issued to a Cuban resident, in Cuba, and that all premium payments were made in Cuba. There is some dispute as to whether the premium payments were made in pesos or in dollars but this would not create a material issue of fact because even if it were established that the insured paid and the company accepted dollars after the passage of

certain Cuban currency laws, this would be insufficient to invoke an estoppel as each party would have been guilty of a violation of law. See Montsdoca v. Highlands Bank & Trust Co., 85 Fla. 158, 95 So. 666 (1923); and Northwestern National Casualty Company v. McNulty, 307 F.2d 432 (5 Cir. 1962).

The insured moved to Florida and demanded the association pay him the matured value of the endowment policy in dollars in Florida. It refused but offered to pay him only in pesos in Havana, Cuba. He sued in equity and recovered a judgment for the matured value of the policy in dollars.

We are unable to discover a second contract with a situs in the United States under these facts. See Confederation Life Association v. Vega y Arminan, Fla. App. 1968, 207 So. 2d 33, aff'd Fla. 1968, 211 So. 2d 169. We hold the second contract theory pronounced in Vega does not apply to the facts herein.

The Association cannot escape from its obligation by attempting to require a Cuban resident who has fled to the U.S.A. for his safety or life to return to Cuba to collect money obviously due under an insurance policy. Such conduct is clearly inequitable; cannot be countenanced and constitutes a breach of contract. Insurance contracts are transitory and the insured may sue, as here, in a jurisdiction other than where the policy was issued, or is to be performed. Confederation of Canada L. Ins. Co. v. Vega y Arminan, Fla. App. 1962, 135 So. 2d 867; cert. denied, Fla. 1962, 144 So. 2d 805.

Since no second contract theory applies, the final judgment must be for plaintiff but should be in the dollar equivalent of the pesos due to plaintiff. See Johansen v. Confederation Life Association, 312 F. Supp. 1056, (S.D. N.Y. 1970); Confederation Life Association v. Ugalde, Fla. App. 1963, 151 So. 2d 315, cert. granted, Fla. 1964, 164

So. 2d 1 (rev'd on other grounds), cert. denied 379 U.S. 915 (1964).

Judgment for plaintiff is affirmed but that part of the judgment expressed in U. S. dollars is reversed.

On remand judgment for plaintiff for the matured value of the policy should be expressed in a dollar value equivalent to the proper conversion rate from pesos. See United States Life Insurance Company v. Alonso, Fla. 1967, 201 So. 2d 577.

Affirmed in Part; Reversed in Part.

C. J. Swann—I concur in part and dissent in part.

In addition to the second contract principle pronounced in Vega, 207 So. 2d 33, we held that Cuba had withdrawn from the International Monetary Fund and the laws of a non-member nation are not given extraterritorial effect under the terms of the Bretton Woods Agreement.

We approved, in Vega, a decree which held that provisions for payment of insurance proceeds in Havana, Cuba were for the convenience of the parties only and held that such clauses were not a bar to recovery in Florida. Cf. Gonzalez y Comejo v. Sun Life Assurance Co. of Canada, 313 F. Supp. 1011 (D.C. Puerto Rico 1970).

In addition, I think we can take judicial notice that it would be impossible for a Cuban who has fled to the U.S.A. from Cuba to return thereto, collect pesos due under an insurance policy in Havana, and safely return to the United States with his property. See 17 Am. Jur. 2d Contracts § 420.

I would affirm the final judgment.

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1972

Case No. 41,888

REYES ARIDA CONTE, *Cross-Petitioner,*

-VS-

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, *Cross-Respondent.*

Opinion filed July 19, 1972

Cross-Petition for Writ of Certiorari to the District Court of Appeal, Third District

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BOYD, J.

This cause came before us on petition and cross-petition for writ of certiorari to review the decision of the District Court of Appeal, Third District, reported at 254 So. 2d 45. The petition was denied without argument by Order dated April 4, 1972, and the cause retained for argument on the cross-petition.

Cross-petitioner questions the action of the District Court in reversing the trial court's award of $4,000.00 United States dollars, the face value of a twenty-year endowment contract issued by petitioner in Cuba. In reversing the portion of the judgment expressed in United States dollars for the plaintiff, the District Court stated:[1]

> "On remand judgment for plaintiff for the matured value of the policy should be expressed in a dollar value equivalent to the proper conversion rate from pesos."

The foregoing holding of the District Court was rendered prior to this Court's decision in *de Lara* v. *Confederation*

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[1] 254 So. 2d 45, 47 (Fla. App. 3rd 1971).

Life Association,[2] and is in conflict therewith. In *de Lara*, we held that beneficiaries under a life insurance policy issued in Cuba to a Cuban National could recover the face amount of the policy in the United States in United States dollars. In *de Lara*, as in the instant case, the policy provided that all sums payable under the policy "shall be paid in lawful currency of the United States of America." However, some years after the policy in the instant case and the one in *de Lara* were issued, Cuban monetary laws were enacted which required that all policies be payable in pesos only.

The Cuban monetary laws were held binding and effective in this country in *Confederation Life Association* v. *Ugalde*,[3] because of the International Monetary Fund Agreement. But Cuba withdrew from the International Monetary Fund Agreement effective April 2, 1964. Thereafter, this Court in *Confederation Life Association* v. *Vega*,[4] approved the decision of the District Court of Appeal, Third District,[5] holding that since Cuba had withdrawn from the International Monetary Fund Agreement, Cuban laws would no longer be given extra-territorial effect under the terms of the Bretton Woods Agreement.

Accordingly, certiorari is granted and that portion of the District Court's opinion reversing the award of the face value of the policy in United States dollars, is quashed and the cause remanded with directions to reinstate the trial court's award in the amount of $4,000.00.

It is so ordered.

ROBERTS, C.J., ERVIN, CARLTON, ADKINS, MCCAIN and DEKLE, JJ., Concur.

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[2] 257 So. 2d 42 (Fla. 1972).

[3] 164 So. 2d 1 (Fla. 1964).

[4] 211 So. 2d 169 (Fla. 1968).

[5] 207 So. 2d 33 (Fla. App. 3rd 1968).

JULY TERM, A.D. 1972

Tuesday, October 10, 1972

Case No. 41,888

CONFEDERATION LIFE ASSOCIATION, ETC.,
Petitioner, Cross-Respondent,

vs.

REYES ARIDA CONTE, *Respondent, Cross-Petitioner.*

On consideration of the petition for rehearing filed by attorneys for cross-respondent,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

ROBERTS, C.J., ERVIN, CARLTON, ADKINS, BOYD, McCAIN and DEKLE, JJ., concur.

A True Copy
TEST:

SID J. WHITE

Sid J. White
Clerk Supreme Court.